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In the Supreme Court of the United States

No. 71-1345

JAMES B. CRISMON,
Petitioner,

VS.

UNITED STATES OF AMERICA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY TO MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

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(On Brief)

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Petitioner's original petition for a Writ of Certiorari begs the invocation of this Court's supervisory power. The United States Court of Appeals, Eighth Circuit affirmed the conviction and imprisonment of a multi-millionaire in a twenty-five word order. The transgression by the trial court requested to be reviewed is the introduction into evidence of the testimony of a witness for the United States, June Saltz. Upon a preliminary and seemingly innocuous question by the United States Attorney, Ms. Saltz testified she was defendant's mistress (Pet. App. B, A-2). She further testified to facts and statements which could be construed as contemplation of flight (Pet. App. B, A-4-8; Solicitor General's Memorandum in Opposition, 2). What

can be more prejudicial for a lay jury in a highly publicized case of a multi-millionaire country banker than he has a mistress? How unique a departure from the accepted and usual course of judicial proceedings is it to allow testimony of contemplated flight? Defendant was heinously prejudiced.

The evidence presented by either side was essentially balanced. The scales of justice could have tipped either direction. Ms. Saltz unfairly tipped the scales. The United States Court of Appeals, Eighth Circuit, reversing the District Court in *Nigro* v. *United States,* 117 F.2d 624, stated ". . . With the scales thus balanced, Monroy's testimony unquestionably was highly prejudicial."

The District Attorney's evidence concerning flight is that of contemplated flight. Contemplate indicates an expectation or intention. It is not an undertaking. *Read* v. *Fox,* 104 N.Y.S. 251, 253, 119 App.Div. 366. *Embree* v. *United States,* 320 F.2d 666 states the criterion for admissibility of flight:

> ". . . there is nothing in the record to indicate that he was informed, before his attempted flight, that he was being sought in connection with the offenses involved in this case, such flight does not constitute an admission, or other evidence, that he is guilty of those crimes."

To introduce evidence of flight—flight must be shown. Just as in *Embree* when introduction into evidence of flight not connected to the crimes defendant was being tried for was reversible error, it is Petitioner's position actual flight must be shown to introduce into evidence any evidence of flight.

The admission of irrelevant facts which have a prejudicial tendency is fatal to a conviction. Petitioner cannot believe this Court will allow a conviction to stand in a Court of the United States which is based on highly prejudicial evidence. This Court has reversed on certiorari before even though there was sufficient relevant evidence to sustain the verdict. *Hall* v. *United States,* 150 U.S. 76, 14 S.Ct. 22, 37 L.Ed. 1003; *Williams* v. *United States,* 168 U.S. 382, 18 S.Ct. 92, 42 L.Ed. 509.

A Petition for a Writ of Certiorari is respectfully requested.

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